

1 LAURA E. DUFFY  
United States Attorney  
2 ERIC J. BESTE  
JONATHAN I. SHAPIRO  
3 Assistant U.S. Attorney  
California State Bar No. 226089/268954  
4 Federal Office Building  
880 Front Street, Room 6293  
5 San Diego, California 92101-8893  
Telephone: (619) 557-5104/5733  
6 Fax: (619) 557-7055  
Email: [Eric.Beste@usdoj.gov](mailto:Eric.Beste@usdoj.gov),  
7 [Jonathan.Shapiro@usdoj.gov](mailto:Jonathan.Shapiro@usdoj.gov)

8 Attorneys for Plaintiff  
United States of America  
9

10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,	)	Criminal Case No. 10cr2420-BEN
	)	
13 Plaintiff,	)	
	)	
14 v.	)	
	)	<u>PLEA AGREEMENT</u>
15 ROGER T. JONES,	)	
	)	
16 Defendant.	)	
	)	
17	)	

18 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF  
19 AMERICA, through its counsel, LAURA E. DUFFY , United States Attorney,  
20 Eric J. Beste and Jonathan I. Shapiro, Assistant United States  
21 Attorneys, and defendant, ROGER T. JONES ("Defendant"), with the  
22 advice and consent of Jennifer Coon, Esq., Federal Defenders of San  
23 Diego, Inc., counsel for defendant, as follows:

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I

THE PLEA

Defendant agrees to plead guilty to Count 1 of the Indictment in Criminal Case No. 10cr2420-BEN, charging defendant with Conspiracy to commit the offense of wire fraud, that is, to knowingly devise and intend to devise, with the intent to defraud, a material scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and omissions of material fact, and to transmit and cause to be transmitted by means of wire and radio communication in interstate commerce any signs, signals, and sounds for the purpose of executing such scheme and artifice, all in violation of Title 18, United States Code, Section 371.

The government agrees to dismiss the remaining counts of the Indictment after sentencing.

II

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offense of Conspiracy to Commit Offenses (Count 1) to which defendant is pleading guilty has the following elements:

1. Beginning on a date unknown, but no later than April 2009, two or more persons entered into an unlawful agreement and conspiracy to commit offenses against the United States, in this case, to commit Wire Fraud, in violation of Title 18, United States Code, Section 1343;

1       2. Defendant knowingly and willfully became a member of this  
2       conspiracy knowing its objective and intending to help  
3       accomplish it; and

4       3. At least one member of the conspiracy committed at least  
5       one overt act to further an objective of the conspiracy.

6       B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

7       Defendant has fully discussed the facts of this case with defense  
8       counsel. Defendant has committed each of the elements of the crime,  
9       and admits that there is a factual basis for this guilty plea. The  
10      following facts are true and undisputed:

11      1. In early 2009, the United States Treasury announced the  
12      "Making Home Affordable" program as a means of addressing the  
13      foreclosure crisis in the United States, and offered incentives to  
14      homeowners and lenders to encourage them to modify the terms of  
15      nonperforming mortgage loans.

16      2. In or around April 2009, Defendant and co-conspirators  
17      Michael Trap and Glenn Rosofsky (charged elsewhere), along with  
18      others, began soliciting customers for a loan modification business  
19      by the names of Nations Housing Modification Center and Federal  
20      Housing Modification Department (hereinafter collectively referred to  
21      as "NHMC"). NHMC was located in San Marcos, California, and marketed  
22      modification services to homeowners who were either in foreclosure or  
23      were delinquent on their monthly mortgage payments. Although NHMC  
24      sold loan modification services to customers throughout the United  
25      States, it had no connection to the Treasury Department's "Making Home  
26      Affordable" program.

27      3. Rosofsky was in charge of NHMC's sales and marketing, and  
28      Trap was responsible for NHMC's finances, bank accounts, and the

1 processing of customers' files. Defendant's role in the conspiracy  
2 was to manage the telemarketing room that received calls from  
3 customers across the nation seeking loan modifications. Defendant  
4 worked in this capacity at NHMC from in or about April 2009 through  
5 on or about June 15, 2009.

6 4. While working at NHMC, Defendant agreed with Trap and  
7 Rosofsky and others to use false and fraudulent pretenses,  
8 representations and promises to induce customers to pay thousands of  
9 dollars to purchase loan modification services from NHMC.

10 5. In furtherance of the conspiracy, Trap and Rosofsky caused  
11 solicitation letters to be sent by electronic wire transmission from  
12 San Marcos, California, to a mass-mailing firm in Florida, for  
13 eventual distribution to potential customers. The NHMC solicitation  
14 letters falsely represented that:

- 15 a. NHMC was located on "Capitol Hill" in Washington,  
16 D.C.;
- 17 b. because "a bill has been passed by Congress," NHMC was  
18 allowed "to provide relief for homeowners that are  
19 delinquent on their mortgage through the Nations Home  
20 Affordable Modification Program";
- 21 c. NHMC had "attorneys" and "forensic accountants" on  
22 staff to deal with the loss mitigation departments of  
23 banks on behalf of NHMC's customers; and
- 24 d. NHMC had achieved an "extremely high success rate for  
25 homeowners that met the Nations Home Affordable  
26 Modification Program guidelines."

27 Trap and Rosofsky caused over 60,000 of these solicitation letters to  
28 be sent by United States mail to homeowners throughout the country who

JTC 2P  
J.A. 1 were behind on their mortgage payments. ~~Defendant knew that~~ JM many  
2 statements in the solicitation letters were false and misleading. For  
3 example, NHMC had no presence in Washington, D.C., other than a rented  
4 post office box; NHMC had no connection with the Treasury Department's  
5 "Making Home Affordable" program; NHMC did not have attorneys or  
6 forensic accountants on staff; and NHMC had not achieved an extremely  
7 high success rate on behalf of its customers.

8 6. The fraudulent solicitation letters invited prospective  
9 customers to call NHMC to learn if they qualified for NHMC's loan  
10 modification program. Defendant supervised a staff of telemarketers  
11 located in San Marcos to answer calls from prospective customers, and  
12 actually handled calls from some customers. Defendant falsely  
13 represented, ~~and~~ and/or caused other telemarketers to falsely represent, to  
14 prospective customers:

- 15 a. that NHMC had a loan modification group made up of  
16 attorneys and forensic accountants;  
17 b. that NHMC was extremely selective in accepting  
18 customers, stating that NHMC only accepted about 25%  
19 of callers; and  
20 c. that NHMC had a high success rate of modifying loans  
21 for its customers.

22 Defendant falsely told certain customers that an attorney named "John  
23 Gillespie" would be handling their modification, and that "John  
24 Gillespie" had extensive experience negotiating with their specific  
25 lender.

26 7. Defendant and his co-conspirators knew that these  
27 representations made by NHMC's telemarketers were false, because (I)  
28 NHMC did not have a loan modification group that included attorneys

1 and forensic accountants; (ii) NHMC was not extremely selective in  
2 accepting customers; and (iii) NHMC did not have a high success rate  
3 of modifying loans on behalf of its customers. Defendant also knew  
4 that no one named "John Gillespie" worked at NHMC or that any of the  
5 processors at NHMC were attorneys with lender-specific experience.

6 8. Defendant and other telemarketers also used misleading ploys  
7 to make it appear that homeowners' applications were being evaluated  
8 by an "underwriter" or attorney at NHMC, when in fact no such review  
9 was taking place. After falsely advising customers that their  
10 application had been favorably reviewed, Defendant and other  
11 telemarketers would convince customers to provide bank account  
12 information so their accounts could be debited by NHMC.

13 9. During his time as the telemarketing room manager, Defendant  
14 and the other telemarketers fraudulently convinced approximately 236  
15 homeowners to pay between \$2,500 and \$3,000 to NHMC for assistance in  
16 modifying their mortgage loans. Many of these funds were transferred  
17 to NHMC's bank accounts in the Southern District of California by  
18 interstate wire transmissions. One of these transfers occurred on or  
19 about May 21, 2009, when Defendant and his co-conspirators caused  
20 \$2,500 to be withdrawn from the bank account of victim L.B. located  
21 in Spokane, Washington, and transferred to NHMC's bank account in San  
22 Diego, California.

23 10. As a result of the false and fraudulent representations made  
24 in NHMC's mailers and by Defendant and the other telemarketers, the  
25 conspirators caused victims to pay NHMC approximately \$1,300,000  
26 between April 2009 and July 2009. Taking into account charge-backs  
27 and debits to NHMC's account for clients who had insufficient funds,  
28

1 the total amount of money fraudulently taken by NHMC during that time  
2 period was at least \$900,000.

3 11. On or about July 22, 2009, Defendant met with agents from  
4 the United States Department of Treasury, Special Inspector General  
5 for the Troubled Asset Relief Program ("SIG- TARP") and United States  
6 Postal Inspection Service in Vista, California, to answer questions  
7 about NHMC. During this interview Defendant falsely claimed that when  
8 he started at NHMC in April 2009 he was introduced to a man named  
9 "John Gillespie" who had claimed to be an attorney from the East Coast  
10 working with "10-12 guys who were capable of doing what was referenced  
11 in the [NHMC solicitation] letter." This statement was false and  
12 fraudulent, as Defendant had not met with an attorney named "John  
13 Gillespie" and no attorneys had worked on staff at NHMC. It was  
14 material to the SIG-TARP investigation to determine whether attorneys  
15 had actually worked at NHMC, and Defendant's false statement  
16 significantly obstructed or impeded this aspect of the investigation.

17 III

18 PENALTIES

19 Defendant understands that the crime of Conspiracy to Commit  
20 Offenses (Count 1) to which defendant is pleading guilty carries the  
21 following penalties:

- 22 A. a maximum 5 years in prison;
- 23 B. a maximum fine of the greatest of \$250,000, twice the gross  
24 pecuniary gain derived from the offense, or twice the gross  
25 pecuniary loss to a person other than the Defendant as a  
26 result of the offense;
- 27 C. a mandatory special assessment of \$100 (18 U.S.C. § 3013);
- 28

- 1 D. a term of supervised release of at least two years but not  
2 more than three years (U.S.S.G. § 5D1.1-5D1.2); and  
3 E. an order from the court pursuant to Title 18, United States  
4 Code, Section 3663A that Defendant make mandatory  
5 restitution to the victim(s) of the offense of conviction,  
6 or the estate(s) of the victims(s). Defendant understands  
7 that the court shall also order, if agreed to by the  
8 parties in this plea agreement, restitution to persons  
9 other than the victim(s) of the offense of conviction.

10 IV

11 DEFENDANT'S WAIVER OF TRIAL RIGHTS

12 Defendant understands that this guilty plea waives the right to:

- 13 A. continue to plead not guilty and require the Government to  
14 prove the elements of the crime beyond a reasonable doubt;  
15 B. a speedy and public trial by jury;  
16 C. the assistance of counsel at all stages of trial;  
17 D. confront and cross-examine adverse witnesses;  
18 E. present evidence and to have witnesses testify on behalf of  
19 defendant; and  
20 F. not testify or have any adverse inferences drawn from the  
21 failure to testify.

22 V

23 DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT TO BE  
24 PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

25 The Government represents that any information establishing the  
26 factual innocence of defendant known to the undersigned prosecutor in  
27 this case has been turned over to defendant. The Government will  
28 continue to provide such information establishing the factual  
innocence of defendant.



1 Defendant understands that if this case proceeded to trial, the  
2 Government would be required to provide impeachment information  
3 relating to any informants or other witnesses. In addition, if  
4 defendant raised an affirmative defense, the Government would be  
5 required to provide information in its possession that supports such  
6 a defense. Defendant acknowledges, however, that by pleading guilty  
7 defendant will not be provided this information, if any, and  
8 Defendant also waives the right to this information. Finally,  
9 defendant agrees not to attempt to withdraw the guilty plea or to file  
10 a collateral attack based on the existence of this information.

11  
12 VI

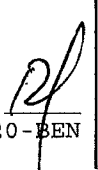
13 DEFENDANT'S REPRESENTATION THAT GUILTY  
14 PLEA IS KNOWING AND VOLUNTARY

15 Defendant represents that:

- 16 A. Defendant has had a full opportunity to discuss all the  
17 facts and circumstances of this case with defense counsel,  
18 and has a clear understanding of the charges and the  
19 consequences of this plea;  
20 B. No one has made any promises or offered any rewards in  
21 return for this guilty plea, other than those contained in  
22 this plea agreement or otherwise disclosed to the court;  
23 C. No one has threatened defendant or defendant's family to  
24 induce this guilty plea; and  
25 D. Defendant is pleading guilty because in truth and in fact  
26 defendant is guilty and for no other reason.

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28 //

Def. Initials   
10CR2420-BEN

1 VII

2 AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE  
3 SOUTHERN DISTRICT OF CALIFORNIA

4 This plea agreement is limited to the United States Attorney's  
5 Office for the Southern District of California, and cannot bind any  
6 other federal, state or local prosecuting, administrative, or  
7 regulatory authorities, although the Government will bring this plea  
8 agreement to the attention of other authorities if requested by  
9 defendant.

10 VIII

11 APPLICABILITY OF SENTENCING GUIDELINES

12 Defendant understands the sentence imposed will be based on the  
13 factors set forth in 18 U.S.C. § 3553(a). Defendant understands  
14 further that in imposing the sentence, the sentencing judge must  
15 consult the United States Sentencing Guidelines (Guidelines) and take  
16 them into account. Defendant has discussed the Guidelines with  
17 defense counsel and understands that the Guidelines are only advisory,  
18 not mandatory, and the court may impose a sentence more severe or less  
19 severe than otherwise applicable under the Guidelines, up to the  
20 maximum in the statute of conviction. Defendant understands further  
21 that the sentence cannot be determined until a presentence report has  
22 been prepared by the U.S. Probation Office and defense counsel and the  
23 Government have had an opportunity to review and challenge the  
24 presentence report. Nothing in this plea agreement shall be construed  
25 as limiting the Government's duty to provide complete and accurate  
26 facts to the district court and the U.S. Probation Office.

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IX

SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court. Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what defendant's sentence will be. Defendant also has been advised and understands that if the sentencing judge does not follow any of the parties' sentencing recommendations, defendant nevertheless has no right to withdraw the plea.

X

PARTIES' SENTENCING RECOMMENDATIONS

A. SENTENCING GUIDELINE CALCULATIONS

Although the parties understand that the Guidelines are only advisory and just one of the factors the court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments and Departures (if applicable) under the Guidelines:

- |  |     |
|--|-----|
| 1. Base Offense Level [§ 2B1.1]                                    | 6   |
| 2. Loss Caused by Fraud is More than \$400,000. [§ 2B1.1(b)(1)(H)] | +14 |

3. Offense involved more than 50 victims  
[§ 2B1.1(b) (2) (B)] +4
4. Obstructing Justice[§ 3C1.1] +2
5. Acceptance of Responsibility [§ 3E1.1] -3
6. Adjusted Offense Level= 23

B. ACCEPTANCE OF RESPONSIBILITY

Notwithstanding paragraph A.5 above, the Government will not recommend any adjustment for Acceptance of Responsibility if defendant:

1. Fails to admit a complete factual basis for the plea at the time it is entered, or
2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or probation officer, or
3. Fails to appear in court, or
4. Engages in additional criminal conduct, or
5. Attempts to withdraw the plea, or
6. Refuses to abide by any lawful court order.

C. ADJUSTMENTS

The Government agrees to not seek any adjustments other than those set forth in Section X, Paragraph A above. Defendant reserves the right to request any additional adjustments, and the Government reserves the right to oppose any requests.

D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

There is **no** agreement as to defendant's Criminal History Category.

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1 E. DEPARTURES

2 Defendant reserves the right to request additional downward  
3 departures pursuant to U.S.S.G. § 5K2.0. The Government will oppose  
4 any downward departure not set forth above.

5 F. "FACTUAL BASIS" AND "RELEVANT CONDUCT" INFORMATION

6 The parties agree that the facts in the "factual basis" paragraph  
7 of this agreement are true, and may be considered as "relevant  
8 conduct" under U.S.S.G. § 1B1.3 and as the nature and circumstances  
9 of the offense under 18 U.S.C. § 3553(a)(1).

10 G. PARTIES' RECOMMENDATIONS REGARDING CUSTODY

11 The parties agree that the Government will recommend that  
12 defendant be sentenced to the low end of the advisory guideline range  
13 as calculated by the Government pursuant to this agreement. However,  
14 if the Court adopts an offense level or downward adjustment or  
15 departure below the Government's recommendations in this plea  
16 agreement, the Government will recommend a sentence as near as  
17 possible to what the sentence would have been if the Government's  
18 recommendations had been followed.

19 H. SPECIAL ASSESSMENT/FINE/RESTITUTION

20 Special Assessment. The parties will jointly recommend that  
21 defendant pay a special assessment in the amount of \$100 to be paid  
22 forthwith at time of sentencing. The special assessment shall be paid  
23 through the office of the Clerk of the District Court by bank or  
24 cashier's check or money order made payable to the "Clerk, United  
25 States District Court."

26 Fine. The parties will jointly recommend that no fine be imposed  
27 in this case in order to provide for the maximum recovery of  
28 restitution from Defendant.

1       Restitution. The parties have no agreement regarding restitution.  
2 Defendant understands that restitution is mandatory as to Count 1, and  
3 that restitution on that count could be more than \$900,000. The  
4 amount of any restitution will be set by the Court at a later date as  
5 part of sentencing.

6       Defendant agrees that, before sentencing, defendant shall provide  
7 to the United States, under penalty of perjury, a financial disclosure  
8 form listing all his assets and financial interests valued at more  
9 than \$1,000. Defendant understands that these assets and financial  
10 interests include all assets and financial interests in which  
11 defendant has an interest (or had an interest prior to 2010), direct  
12 or indirect, whether held in defendant's own name or in the name of  
13 another. Defendant shall also identify all assets valued at more than  
14 \$5,000 which have been transferred to third parties since January 1,  
15 2009, including the location of the assets and the identity of the  
16 third parties.

17       The parties will jointly recommend that as a condition of  
18 probation or supervised release, defendant will notify the Collections  
19 Unit, United States Attorney's Office, of any interest in property  
20 obtained, directly or indirectly, including any interest obtained  
21 under any other name, or entity, including a trust, partnership or  
22 corporation after the execution of this plea agreement until the fine  
23 or restitution is paid in full.

24       The parties will also jointly recommend that as a condition of  
25 probation or supervised release, defendant will notify the Collections  
26 Unit, United States Attorney's Office, before defendant transfers any  
27 interest in property owned directly or indirectly by defendant,  
28

1 including any interest held or owned under any other name or entity,  
2 including trusts, partnerships and/or corporations.

3 XI

4 DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

5 In exchange for the Government's concessions in this plea  
6 agreement, defendant waives, to the full extent of the law, any right  
7 to appeal or to collaterally attack the conviction and sentence,  
8 including any restitution order, unless the court imposes a custodial  
9 sentence greater than the high end of the guideline range (or  
10 statutory mandatory minimum term, if applicable) recommended by the  
11 Government pursuant to this plea agreement at the time of sentencing.  
12 If the custodial sentence is greater than the high end of that range,  
13 defendant may appeal, but the Government will be free to support on  
14 appeal the sentence actually imposed. If defendant believes the  
15 Government's recommendation is not in accord with this plea agreement,  
16 defendant will object at the time of sentencing; otherwise the  
17 objection will be deemed waived.

18 XII

19 CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT  
20 THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE  
21 THE PLEA

22 This plea agreement is based on the understanding that, prior to  
23 defendant's sentencing in this case, defendant has not committed or  
24 been arrested for any offense not known to the Government prior to  
25 defendant's sentencing. This plea agreement is further based on the  
26 understanding that defendant has committed no criminal conduct since  
27 defendant's arrest on the present charges, and that defendant will  
28 commit no additional criminal conduct before sentencing. If defendant  
has engaged in or engages in additional criminal conduct during this

1 period, or breaches any of the terms of any agreement with the  
2 Government, the Government will not be bound by the recommendations  
3 in this plea agreement, and may recommend any lawful sentence. In  
4 addition, at its option, the Government may move to set aside the  
5 plea.

6 XIII

7 ENTIRE AGREEMENT

8 This plea agreement embodies the entire plea agreement between  
9 the parties and supersedes any other plea agreement, written or oral.

10 XIV

11 MODIFICATION OF AGREEMENT MUST BE IN WRITING

12 No modification of this plea agreement shall be effective unless  
13 in writing signed by all parties.

14 XV

15 DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

16 By signing this plea agreement, defendant certifies that  
17 defendant has read it (or that it has been read to defendant in  
18 defendant's native language). Defendant has discussed the terms of  
19 this plea agreement with defense counsel and fully understands its  
20 meaning and effect.

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XVI

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with  
counsel's representation.

LAURA E. DUFFY  
United States Attorney

October 5, 2010

DATED

Jonathan I. Shapiro

ERIC J. BESTE  
JONATHAN I. SHAPIRO  
Assistant U.S. Attorneys

10/1/10

DATED

Jennifer Coon

JENNIFER COON, ESQ.  
Federal Defenders of San Diego, Inc.  
Attorney for Defendant

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR  
UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS"  
PARAGRAPH ABOVE ARE TRUE.

OCT 1, 2010

DATED

Roger T. Jones

ROGER T. JONES  
Defendant

Def. Initials

10CR2420-BEN